

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of MAKENZIE SCHENDEN, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GRACE HUNT,

Respondent-Appellant,

and

JOE SCHENDEN,

Respondent.

In the Matter of CHEYENNE HUNT, Minor.

DEPARTMENT OF HUMAN SERVICES,

Petitioner-Appellee,

v

GRACE HUNT,

Respondent-Appellant.

Before: Donofrio, P.J., and Bandstra and Zahra, JJ.

PER CURIAM.

UNPUBLISHED

February 1, 2007

No. 271502

Montcalm Circuit Court

Family Division

LC No. 2006-000222-NA

No. 271503

Montcalm Circuit Court

Family Division

LC No. 2006-000223-NA

In these consolidated appeals, respondent Grace Hunt appeals as of right from the trial court order terminating her parental rights to her minor children under MCL 712A.19b(3)(k). We affirm.

Respondent first argues that the trial court clearly erred in terminating her parental rights at the initial disposition hearing and without giving her the opportunity to participate in services. The law is clear that the trial court can terminate parental rights at the initial disposition hearing if the petitioner requests termination in the initial petition. MCR 3.977(E)(3). In this case, petitioner requested termination in the initial petition based on the death of the minor children's infant sister, Jadelyne, and the deplorable conditions of the home. Therefore, there was no need to develop and consider a case plan to reunite the family. MCR 3.977(E).

Respondent also argues that the trial court clearly erred in finding that the statutory basis for termination was established by clear and convincing evidence. Forensic pathologist Stephen Cohle testified that the infant's cause of death was homicide by dehydration complicated by starvation and that Jadelyne was given very little, if any, food in her last few days of life. The infant's pediatrician, Christos Konstantelos, testified that he spoke to respondent about his concern for Jadelyne's failure to gain weight, and he requested that she bring Jadelyn for a follow-up visit a week later and attend a two-month appointment. He further testified that respondent did not bring Jadelyne for either appointment. The testimony of the two doctors supports the trial court finding that respondent caused the death of Jadelyne consistent with MCL 712A.19b(3)(k)(vi) or (vii). Although there was testimony that respondent and others fed Jadelyne in the days before her death, this Court shall give regard to the trial court's special opportunity to judge the credibility of witnesses who appeared before it. MCR 2.613(C). The trial court's choice to give greater weight to the testimony of Dr. Cohle and Dr. Konstantelos was not clear error and, therefore, the trial court did not clearly err in finding that section (k) was established by clear and convincing evidence.

Finally, respondent argues that the trial court clearly erred by failing to make a best interests determination. The trial court specifically addressed Cheyenne and Makenzie's best interests, finding that, although there was love and affection present, it could not override the fact that a child was starved to death while in respondent's care and that respondent lacked the capacity to provide the things that children need. Respondent's lack of capacity was demonstrated by Jadelyne starving to death and by the condition of the home. The trial court did not clearly err in its best interests determination.

Affirmed.

/s/ Pat M. Donofrio
/s/ Richard A. Bandstra
/s/ Brian K. Zahra